

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2020
2020 No. 1605

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument makes provision in relation to charges to customs duty introduced by provisions inserted into the Taxation (Cross-border) Trade Act 2018 (TCTA) by the Taxation (Post-transition Period) Act 2020 (TPTP Act). This additional provision will enable the charges to operate effectively from the end of the transition period following the withdrawal of the United Kingdom (UK) from the European Union (EU). The instrument also includes detailed provisions concerning the application of TCTA and other UK customs legislation in Great Britain (GB) and Northern Ireland (NI), for example to take account of the EU customs legislation that will apply in NI, as well as other consequential changes.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument needs to come into force at the end of the transition period on 31 December 2020 to ensure customs procedures operate efficiently at the end of the transition period and there is smooth movement of goods between GB and NI and GB and the EU. Therefore, the convention of leaving 21 days between a statutory instrument being laid and coming into force will be breached. Making this instrument earlier was not possible as it is dependent on the TPTP Act receiving Royal Assent and the publication of the Withdrawal Agreement Joint Committee decision regarding goods that are not ‘at risk’ of moving to the EU. The short notice should not significantly affect businesses as the changes do not introduce any requirement beyond what has already been agreed, or are a necessary consequence of what has been agreed, in the Northern Ireland Protocol (the Protocol).
- 3.2 This instrument makes provision by reference to things to be specified in notices published by HMRC. The need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session 2017-2019) are noted. TCTA includes such an express power. This instrument relies on section 32(8) of TCTA which provides that any power to make regulations under Part 1 of TCTA includes power conferring a discretion on any specified person to do anything under, or for the purposes of, the regulations; and power to make provision by reference to things specified in a notice published in accordance with the regulations. The notices that will be made under this instrument

will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> no later than the date on which the relevant provisions of the instrument come into force.

- 3.3 This instrument refers to documents by reference. The “Personal Property Relief document” sets out circumstances in which a claim for relief may be made when moving personal property to NI from GB; a new version of the “temporary admission document” lists goods that can be declared to the temporary admission procedure and therefore benefit from relief; and a new version of the “UK Reliefs document” provides additional content to ensure that goods sent to NI from GB for processing under EU customs legislation will be covered by reliefs on their return; and to ensure that returned goods relief does not cover goods that exit NI and re-enter GB. The documents contain information that would be disproportionate to include on the face of the instrument. In addition to the above, this instrument refers directly to the Withdrawal Agreement Joint Committee decision on the determination of goods not ‘at risk’ that sets out where goods are considered not ‘at risk’ of being moved to the EU and therefore not subject to EU tariffs.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made primarily under TCTA as amended by the TPTP Act.
6.2 It supplements, and gives effect to, the customs duty charging provisions which were inserted into TCTA by the TPTP Act. These provisions implement the Protocol and allow customs processes to operate effectively from the end of the transition period. The Protocol sets out the special arrangements for NI that were agreed by the UK and the EU as part of the terms for the UK to leave the EU and is contained in the Withdrawal Agreement, which was published 19 October 2019 and given legal effect in the UK by the European Union Withdrawal Agreement Act 2020.
6.3 The measures in this instrument will be brought into force using the power in section 52(2) of TCTA which allows subordinate legislation to be brought into force on a day appointed by the Treasury in regulations. This is on the basis that the Treasury is of the view that it is appropriate to do so in consequence of, or otherwise in connection with, the UK’s withdrawal from the EU.

7. Policy background

What is being done and why?

- 7.1 The instrument makes provision in relation to the customs duty charges introduced by the TPTP Act, following the agreement of the Protocol.
- 7.2 In relation to the customs duty charge that will apply for goods imported into the UK as a result of their entry into NI and the customs duty charge that will apply for goods removed to NI from GB, the instrument includes provisions concerning:
- when the relevant charge will not apply (including in certain circumstances for goods from the UK Crown Dependencies and certain fish catches);
 - the meaning of ‘at risk’ of subsequently being moved into the European Union”, which determines whether the charge to duty under section 40A(1)(b) of TCTA applies;
 - the different arrangements for determining the amount of duty that will apply depending upon whether the goods are considered to be ‘at risk’ of subsequently being moved into the EU;
 - other details of how the relevant customs duty charge is to be calculated;
 - the availability of reliefs;
 - the application of certain UK customs legislation for the purposes of these charges (including in relation to record keeping requirements and penalties).
- 7.3 In relation to the customs duty charge that will apply for goods removed to GB from NI, the instrument includes provisions concerning:
- when the charge will not apply (including fish removed to GB from NI in certain circumstances);
 - TCTA legislation that will apply in relation to the charge and how various customs legislation will be applied for the purposes of goods removed to GB from NI. It is intended that there will be no customs requirements in GB for such goods unless the goods are (i) subject to a charge on removal to GB from NI; or (ii) subject to excise duty, for which a customs declaration will be required;
 - other details of how the relevant customs duty charge is to be calculated;
 - details of how TCTA and other UK customs legislation (including those concerning offences and penalties) and approvals and authorisations issued under TCTA will apply for the purposes of this charge. This includes details of how various terms used in this customs legislation are to be read for the purposes of the charge.
- 7.4 The instrument also sets out where qualifying Northern Ireland goods (as defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454) for the purposes of the European Union (Withdrawal) Act 2018), as well as certain other goods, can retain domestic status for the purposes of TCTA when they are exported from the UK by being removed from NI.
- 7.5 The instrument includes various other changes to TCTA and other UK customs legislation, which are necessary to take account of the fact that the EU customs legislation will apply for goods entering NI and that a new customs duty is charged on goods removed from GB to NI. For example:

- changes are made to regulations made under TCTA concerning the availability of special customs procedures, so that these TCTA procedures can usually only be used for goods imported to the UK by entry to GB, for use in GB;
- regulations made under TCTA which make provision for certain transit procedures applying to goods moved under internationally-agreed customs rules, are amended so that these regulations generally only apply to goods whilst they are in GB;
- provisions in the Customs and Excise Management Act 1979 concerning co-operation with customs services of EU member states are modified in order to take account of the legislation on customs co-operation that will apply in respect of NI;
- regulations concerning the requirement to retain customs accounts and records are applied for the purposes of the EU legislation that will have effect in respect of NI, with certain updates;
- offences and penalties for breaches of customs rules are made applicable in respect of breaches of the EU legislation that will apply in respect of NI.

7.6 Finally, modifications made to TCTA and regulations made under TCTA in relation to the UK Crown Dependencies are updated in consequence of other changes in this instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it supplements, and gives effect to the charging provisions that were inserted into TCTA by the TPTP Act in order to implement provisions of the Protocol.

9. Consolidation

9.1 Consolidation is not being done. The provisions that relate to the customs duty charging provisions which are being introduced by the TPTP Act are new legislation and no consolidation is required. It is not possible to consolidate the consequential amendments set out in this instrument at this time as they need to be in force by the end of the transition period.

9.2 These regulations form part of the significant programme of secondary legislation to be delivered by HMRC by the end of 2020 relating to the UK's departure from the European Union. The Customs (Import Duty) (EU Exit) Regulations 2018 were drafted to deal with the possibility that there would not be a deal with the EU by 29 March 2019. This legislation has been required to be amended in light of issues arising following extensions which took place in order for an agreement to be reached with the EU. Following the ratification of the EU Withdrawal Agreement it is now necessary to again update this legislation prior to 31 December 2020. Further changes will need to be made to the Customs (Import Duty) (EU Exit) Regulations 2018 before 31 December 2020. Policy development and stakeholder consultation did not conclude in time for the inclusion of changes, which relate to duty deferment, to be included in this instrument. Consequently, it is not possible to deliver this legislation by consolidation at this time.

10. Consultation outcome

- 10.1 No formal consultation regarding this instrument has taken place. However, the instrument, together with the TPTP Act, make provision in relation to the application of certain provisions in the Protocol. Consultation on the practical implications of the Protocol has taken place with businesses. Throughout the transition period, HMRC's NI Stakeholder Engagement Team (Niset) have consulted with a wide range of businesses and representative bodies who would be impacted. The Niset were keen to include in the conversation, businesses who would be new to customs activity and involvement with HMRC.
- 10.2 In the early part of the transition period, despite COVID restrictions, the Niset managed to run a number of data gathering exercises engaging with both large businesses and small and medium sized enterprises in key sectors of the NI economy; the aim was to identify how their supply chains worked and subsequent trade flows. The Niset also ran projects in areas such as tariffs and goods 'at risk' of being moved to the EU.
- 10.3 In particular, the Niset set up a NI Protocol Joint Customs Consultative Committee (JCCC) sub-group to provide a forum for NI businesses specifically. This involved regular meetings set up in advance of public release of new guidance. This group includes business representation bodies and associations across the agri-food, retail, manufacturing, and logistics and transport sectors; accountancy bodies in both NI and Ireland; and the Federation of Small Businesses. This has given these bodies a voice to present key concerns within their industry and allowed HMRC to understand their industry and the problems that the implementation of the Protocol may present for them. Some 1-2-1 meetings were also accommodated with representative bodies to discuss papers they presented in support their key issues.
- 10.4 Whilst these main JCCC forums highlighted varying issues from sector to sector, some sector-based forums were supported to allow areas for example, agri-food to be discussed more comprehensively. The Niset further supported individual representative body events as organised for their members. Separate conversations have also been accommodated with utility providers.
- 10.5 The Niset have acted as a conduit in feeding all issues raised across our stakeholder engagement to policy colleagues, the government, and ultimately discussions with the EU to ensure that they were considered in the formulating of decisions made in relation to the Protocol.
- 10.6 Consultation with businesses will continue both before and after the implementation of the changes in this instrument.

11. Guidance

- 11.1 Guidance in relation to the new charging provisions will be available at www.gov.uk before 1 January 2021.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There are not expected to be any continuing costs. The provisions do not introduce any requirement beyond what has already been agreed, or are a necessary consequence of what has been agreed, in the Protocol.

- 12.3 The impact on the public sector is mainly the costs incurred by HMRC in setting up the Trader Support Service (TSS). The TSS has been set up by the UK government to help all traders, regardless of size and at no additional cost, to move their goods between GB and NI, and to import goods into NI from the rest of the world.
- 12.4 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the majority of businesses will be able to access the TSS, at www.gov.uk/guidance/trader-support-service.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under constant review to ensure that it meets the policy objectives, and to ensure burdens on businesses are carefully monitored.
- 14.2 The regulation does not include a statutory review clause by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where provisions are in connection with a tax or duty.

15. Contact

- 15.1 The Customs EU Exit Secondary Legislation Team, at HMRC, email: customseuexitlegislation@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alexander Pienaar, Deputy Director for Customs EU Exit Negotiations, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.